

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:19-CV-272-LCB-LPA

MAXWELL KADEL; JASON FLECK;
CONNOR THONEN-FLECK; JULIA
MCKEOWN; MICHAEL D. BUNTING, JR.;
C.B., by his next friends and parents,
MICHAEL D. BUNTING, JR. and
SHELLEY K. BUNTING; SAM SILVAINE;
AND DANA CARAWAY,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as
State Treasurer of North Carolina, DEE
JONES, in her official capacity as Executive
Administrator of the North Carolina State
Health Plan for Teachers and State
Employees; UNIVERSITY OF NORTH
CAROLINA AT CHAPEL HILL; NORTH
CAROLINA STATE UNIVERSITY;
UNIVERSITY OF NORTH CAROLINA AT
GREENSBORO; and NORTH CAROLINA
STATE HEALTH PLAN FOR TEACHERS
AND STATE EMPLOYEES; and STATE OF
NORTH CAROLINA, DEPARTMENT OF
PUBLIC SAFETY;

Defendants.

**DEFENDANT NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY'S
MOTION TO EXTEND EXPERT
DISCLOSURE DEADLINE**

Pursuant to Federal Rule of Civil Procedure 16(b)(4) and Local Civil Rule 26.1(d), and for the reasons discussed below, Defendant North Carolina Department of Public Safety ("NCDPS") moves for an extension of its deadline to submit expert disclosures set forth in the scheduling order. In support of this motion, NCDPS says as follows:

Procedural Background

1. On March 11, 2019, Plaintiffs filed the initial complaint in this action. [D.E. 1] NCDPS was not initially a party to this action.

2. On July 8, 2019, Defendants North Carolina State University, University of North Carolina at Chapel Hill and University of North Carolina at Greensboro (collectively, the “University Defendants”) filed their motion to dismiss for failure to state a claim. [D.E. 30]

3. Also on July 8, 2019, Dale Folwell, Dee Jones and the North Carolina State Health Plan for Teachers and State Employees (collectively, the “State Health Plan”) filed their motion to dismiss for failure to state a claim [D.E. 32]

4. On March 11, 2020, after full briefing by the Plaintiffs, the University Defendants and the State Health Plan (collectively, the “Original Parties”), the Court denied both motions to dismiss. [D.E. 45]

5. On April 8, 2020, the State Health Plan filed a notice of appeal with respect to the order denying the motion to dismiss. [D.E. 50] As of the date of filing of this motion, the Fourth Circuit Court of Appeals has not ruled on the appeal.

6. On July 29, 2020, the Original Parties filed their joint report of the initial attorneys’ conference addressing the items required to be considered pursuant to Rule 26(f). [D.E. 61]

7. By text order dated August 13, 2020, the Court adopted the Original Parties’ joint report including the scheduling deadlines set forth in the report.

8. On August 3, 2020, Plaintiffs filed a motion to amend the complaint seeking to add NCDPS as a party, based on claims by a new plaintiff, Dana Caraway, after she exhausted her claim against NCDPS under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. [D.E. 62]

9. On March 5, 2021, the Court granted Plaintiffs' motion to amend the complaint. [D.E. 74]

10. On March 9, 2021, Plaintiffs filed their First Amended Complaint adding NCDPS as a defendant. [D.E. 75]

11. On March 11, 2021, the First Amended Complaint was served on NCDPS by personal delivery of a summons and the First Amended Complaint to Jane Gilchrist, General Counsel for NCDPS. [D.E. 78]

12. On April 16, 2021, NCDPS filed its answer in this matter. [D.E. 96]

13. On March 25, 2021, the Court granted the University Defendants' motion to amend the scheduling order extending the then-existing deadlines by thirty days, such that the deadline for Defendants' affirmative and rebuttal expert reports was May 1, 2021, the deadline for Plaintiffs' rebuttal expert reports is June 1, 2021, and the close of discovery is June 30, 2021.

14. On May 11, 2021, the Court entered an order modifying the scheduling deadlines and establishing July 1, 2021, as the deadline for NCDPS to disclose expert witnesses and July 31, 2021, for the Plaintiff's rebuttal expert reports.

15. May 12, 2021, the Court entered an order granting Plaintiffs' motion for an extension of the Plaintiffs' rebuttal reports of Dr. George Brown and Dr. Randi Ettner to June 11, 2021.

Grounds for Motion

16. Counsel for NCDPS reviewed the expert reports previously submitted by the other defendants and in particular the University Defendants. It appeared that the expert reports were adequate to address issues on which NCDPS would need expert testimony and NCDPS had not intended to submit a separate expert report.

17. In consultation with counsel for the University Defendants, however, for reasons that should become apparent, it appears that NCDPS will not be able to rely on the University Defendants' experts, and NCDPS will need to make separate arrangements.

18. NCDPS has begun to make those arrangements but needs additional time to finalize those arrangements and the disclosure(s).

19. NCDPS anticipates that the scope and content of the disclosures will be extremely similar to the scope and content of the University Defendants' expert disclosures.

20. Given the anticipated similarity of the scope and content of the disclosures, NCDPS submits that Plaintiffs will not be prejudiced, and the schedule will not need additional modification.

21. Given the unanticipated necessity of separate disclosures and the lack of prejudice, NCDPS submits that good cause exists to grant the motion.

22. Counsel for NCDPS has communicated with Plaintiffs' counsel, but as of the filing of this motion, NCDPS's counsel cannot represent Plaintiffs' position.

WHEREFORE Defendant NCDPS respectfully requests that the Court modify the scheduling order to allow it until July 12, 2021 to submit its expert disclosures.

Respectfully submitted, this the 1st day of July, 2021.

JOSHUA H. STEIN
ATTORNEY GENERAL

/s/ Alan D. McInnes
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CERTIFICATE OF SERVICE

I, Alan McInnes, hereby certify that on this day, I electronically filed **DEFENDANT NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY'S MOTION TO EXTEND EXPERT DISCLOSURE DEADLINE** with the Clerk of the Court utilizing the CM/ECF system, which will provide electronic notification to all counsel of record in this matter.

This the 1st day of July, 2021.

/s/ Alan D. McInnes
Alan D. McInnes
Assistant Attorney General